instruction that, if jury believed statements were substantially true, they must find for defendant, by inserting "in the ordinary and usually accepted meaning thereof," after the words "substantially true," held harmless to defendant.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 583.]

6. Trial (§ 267 (3)*)—Modification of Instruction to Eliminate Statement Which Is Repetition or Erroneous Proper.—In action for libel against secretary and treasurer of company of which plaintiff was former president, modification of instruction that an officer and stockholder of a corporation has no right to personally indorse a check drawn by a debtor of and payable to the corporation, and to use or apply the proceeds to payment of a disputed claim which he holds or makes against the corporation, and that such action unauthorized is a misappropriation of funds, by striking out the clause to the effect that such action unauthorized is a misappropriation, held not erroneous; stricken language being either repetition or improper as taking a question from the jury.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 600.]

7. Trial (§ 243*)—Instruction on Privilege in Libel Action Construed as Not Nullifying Prior Instruction.—In an action for libel, instruction that, even if the letter was written and published in good faith, it was not privileged, and defendant was not protected, if it went beyond the occasion or exigency, and was unnecessarily defamatory of plaintiff, held not erroneous as nullifying a prior instruction that the letter was privileged.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 600.]

Error to Corporation Court of Danville.

Action by J. W. Lytton against C. C. Vaughan, Jr. To review judgment for plaintiff, defendant brings error. Affirmed.

Buford & Peterson, of Lawrenceville, for plaintiff in error.

Eugene Withers, of Danville, and *N. T. Green,* of Norfolk, for defendant in error.

ZIRKLE *v.* ALLISON.

Jan. 22, 1920.

[101 S. E. 869.]

1. Logs and Logging (§ 14)*)—No Passing of Title of Timber unless Removed within Time Specified.—Under timber contracts requiring timber to be cut and removed by specified date, the title to timber does not pass out of grantor until grantee cuts and removes

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

it within the period of time specified in the contract; the cutting and removing within such period being a condition precedent.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 12.]

2. Logs and Logging (§ 3 (11)*)—Title to Timber Passed to Grantee upon Removal within Specified Period upon Land of Grantor Other than on Which Timber Was Situated.—Where boundaries of land on which timber was situated were definitely designated and understood by the parties to timber contract, grantee, by cutting timber and removing it upon land of grantor not within such boundaries on which grantee had located sawmill within the period within which he was required by the contract to remove timber, acquired title to the timber.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 12.]

3. Appeal and Error (§ 927 (5)*)—Trial (§ 156 (3)*)—Every Inference to Be Drawn in Favor of Plaintiff on Demurrer to His Evidence.—Where case was presented to trial judge on a demurrer to plaintiff's evidence, both trial court and appellate court will draw every inference in favor of the plaintiff from the evidence which the jury might have drawn.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 524.]

Error to Circuit Court, Culpeper County.

Action by D. T. Zirkle against T. L. Allison. Judgment for defendant, and plaintiff brings error. Reversed.

Grimsley & Miller, of Culpeper, *S. D. Timberlake,* and *Wm. Horgan,* of Warrenton, for plaintiff in error.

Edwin H. Gibson, of Culpeper, for defendant in error.

ROARING FORK R. CO. *v.* LEDFORD'S ADM'R.

[101 S. E. 871.]

Appeal and Error (§ 927 (5)*)—No Inference of Fact to Be Drawn for Defendant in Conflict with Plaintiff's Evidence, Where Defendant Demurred to Evidence.—Appellate court, in considering case in which defendant had interposed demurrer to the evidence, cannot draw an inference of fact from the testimony, where there is direct evidence for the plaintiff in the record in conflict with such inference.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 524.]

On petition for rehearing. Petition denied.

For former opinion, see 101 S. E. 141.

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.